

BEFORE THE

MAR 25 2003

Federal Communications Commission

WASHINGTON, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**ORIGINAL**

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments,)

FM Broadcast Stations)

(Saluda and Irmo, South Carolina))

MB Docket No. 03-8

RM-I0625

To: Assistant Chief, Audio Division. Media Bureau

REPLY COMMENTS

Breckenridge Communications, LLC ("BC"), licensee of Station WJES-FM, Channel 221A, Saluda, South Carolina, herein submits its Reply Comments in the above-captioned proceeding. Specifically, BC responds to the "Comments in Opposition to Proposed Rule Making" filed March 10, 2003 by Glory Communications, Inc. ("Glory"), licensee of Station WFMV(FM), South Congaree, South Carolina. In reply, the following is stated:

The Commission issued the *Notice of Proposed Rule Making* ("NPRM") in this proceeding (DA 03-52. released January 17, 2003) in response to BC's Petition for Rule Making. BC seeks (a) reallocation of Channel 221A from Saluda, South Carolina to Irmo, South Carolina, (b) substitution of Channel 221C3 for Channel 221A at Irmo and (c) modification of the WJES-FM license to specify operation on Channel 221C3 at Irmo.

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Adoption of BC's proposal would bring Irmo, an incorporated community with a population of 11,039,¹ its first local broadcast service. Saluda, a community with a population of 3,066, would still have WJES(AM), a daytime-only station, as a local transmission service. Adoption of the proposed Irmo allotment will serve Priority 3 (first local service), as outlined in *Revision of FM Assignment Policies and Procedures*, 10 FCC 2d 88 (1982) (hereinafter "*Assignment Policies*"). In contrast, retention of WJES-FM at Saluda would serve only Priority 4 (other public interest factors).

As detailed in BC's Petition for Rule Making, Irmo is located in the far northwest corner of the Columbia, South Carolina Urbanized Area. Only 35% of the Urbanized Area would be within the 70 dBu contour of WJES-FM, operating from the proposed reference point. Given the Commission's concern with the potential migration of stations from underserved rural areas to well-served urban areas, BC demonstrated, using the familiar *Tuck* criteria:² that Irmo is an independent community, well-deserving of its first local broadcast service. Here is a summary of some of the facts BC presented to demonstrate Irmo's status as an independent community:

1. Abundant employment opportunities are available in Irmo. A large number and wide variety of businesses are located in Irmo. The Greater Irmo Chamber of Commerce has more than 300 members. Among the major employers is a large fiber plant operated by Honeywell, which employs more than 1,400 persons.
2. Irmo has its own newspaper and other media outlets. The *New Irmo News*, a weekly newspaper, carries news of local

¹ All population figures are from the 2000 Census.

² *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

events and advertising for Irmo businesses. Additionally, there are several internet sites regarding Irmo, including sites operated by the Greater Irmo Chamber of Commerce and the Irmo municipal government.

3. Irmo has a long history and a well-established identity separate from that of Columbia. The town, created in 1890, takes great pride in its history. In connection with the centennial celebration of Irmo's founding, the Irmo municipal government and the local newspaper published a 199-page hardcover book regarding the history of the community. The Greater Irmo Chamber of Commerce actively promotes the community. Among several other functions, the Chamber operates a tourist/information center and produces brochures and leaflets regarding Irmo's attributes and culture. Irmo conducts an annual celebration, the Okra Strut, which is attended by tens of thousands.
4. Irmo has its own local government and elected officials. Irmo is governed by a 5-member town council consisting of the mayor and four council members. Other town officials include the Town Administrator, the Clerk/Treasurer, the director of public services and the Clerk of the Court.
5. Irmo has its own zip code – 29063.
6. Irmo has numerous commercial establishments and other facilities. BC's Petition for Rule Making lists more than two dozen businesses that use Irmo in their name. Medical facilities including doctors' offices, dentists' offices and an out-patient surgical center are located in Irmo.
7. Advertisers can direct their advertising specifically to residents of Irmo through various media, including the *New Irmo News*, the *Lake Murray News*, and various commercial websites.
8. Irmo provides majority of its own municipal services. The Irmo Police Department operates 19 patrol vehicles and has 18 sworn police personnel. Fire protection is provided by the Irmo Fire District, which uses a professional staff.

BC's *Tuck* showing is both comprehensive and convincing. Irmo is clearly an independent community and not a mere appendage of Columbia.

Glow's Opposition. Glory, without so much as a citation to *Tuck*, argues that reallocation of WJES-FM "from rural Saluda to urbanized Irmo must be rejected." The focus of Glory's opposition is the fact that after relocation of WJES-FM the remaining Saluda station would be a 350 watt day timer, WJES(AM). It relies on *LaGrange* and *Rolling Wood, Texas*, 10 FCC Rcd 3337,3338 (1994) for the proposition that the loss of the only nighttime local service to a community must be considered under Priority 4 of *Allotment Priorities*. *LaGrange*, however, involved a significantly different set of circumstances and is not on point.

In *LaGrange*, Fayette Broadcasting Corporation ("Fayette") sought to reallocate the channel used by Station KBUK from LaGrange, Texas to Rollingwood, Texas **and** to upgrade the allotment from Class A to Class C2. LaGrange, the more populous of the two communities, would retain a daytime-only **AM** station. But significantly, a full-time AM station already was licensed to Rollingwood. *Id.* at 75. This fact was dispositive. *Id.* at ¶ 8. Furthermore, the proponent in *LaGrange* appears not to have successfully demonstrated that Rollingwood, which is located in the Austin, Texas Urbanized Area, was sufficiently independent of Austin.

Here, Irmo, which has a population more than three times that of Saluda, has **no** local service. Thus, allotment of Channel 221C3 to Irmo would serve Priority 3, whereas retaining that allotment at Saluda would serve only Priority 4.³

Numerous Commission cases confirm that providing a community, such as Irmo, with its first local service is to be favored over retention of the only local nighttime service in the original community if the original community will retain a local daytime service. *E.g.*, *Greenville and Cooper, Texas*, 17 FCC Rcd 1810, ¶ 5 (Chief, Allocations Branch, 2002); *Willows, California*, 15 FCC Rcd 23852 (Chief, Allocations Branch 2000); *Johnstown, New York*, 13 FCC Rcd 4702 (Chief, Allocations Branch 1998); *Geneseo, Illinois*, 12 FCC Rcd 19477, ¶4 (Chief, Allocations Branch 1997); *Cadiz, Kentucky*, 10 FCC Rcd 10785, ¶16 (Chief, Allocations Branch 1995); *Headland, Alabama*, 10 FCC Rcd 10352, 716 (Chief, Allocations Branch 1995); *Ravenswood, West Virginia*, 10 FCC Rcd 3181 (Chief, Allocations Branch 1995); *Scotland Neck, North Carolina*, 7 FCC Rcd 5113 (Chief, Allocations Branch 1992), *recon. denied*, 10 FCC Rcd 11,066 (1995).

Similarly here, BC's proposal to allot Channel 221C3 at Irmo should be adopted as a higher allotment priority than retaining Channel 221A at Saluda. Irmo clearly needs and deserves its own local station.


³ Moreover, the area that will be losing WJES-FM as a reception service is well served with a minimum of six other FM services. *See* BC Petition for Rule Making, Engineering Exhibit at p.2 & Figure 1. In Saluda itself, ten other FM stations can be received. *Id.* at Figure 1. Because more than sufficient FM service was available, BC's consulting engineer did not determine the additional service available from AM stations.

WHEREFORE, IN LIGHT OF ALL CIRCUMSTANCES PRESENT, it is respectfully requested that the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, be amended as follows:

<u>Community</u>	<u>Present Channel No.</u>	<u>Proposed Channel No.</u>
Irma, SC	—	221C3
Saluda, SC	221A	—

Furthermore, the license of WJES-FM should be modified to specify operation on Channel 221C3 at Irmo, South Carolina.

BRECKENRIDGE COMMUNICATIONS, LLC

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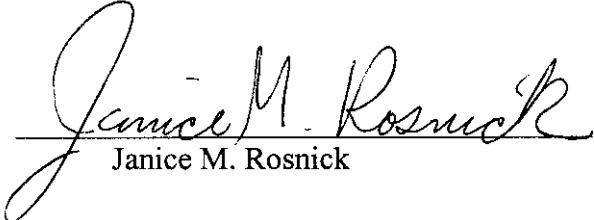
March 25, 2003

CERTIFICATE OF SERVICE

I, Janice M. Rosnick, do hereby certify that I have on this 25th day of March, 2003, caused to be hand delivered or mailed via first class mail, postage prepaid, a copy of the foregoing **REPLY COMMENTS** to the following:

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